

**RULE 39, ARIZONA RULES OF CRIMINAL PROCEDURE**

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

THE STATE OF ARIZONA,  
  
Plaintiff,

vs.

[DEFENDANT'S NAME],  
  
Defendant.

STATE'S RESPONSE TO THE  
DEFENDANT'S MOTION IN LIMINE  
REGARDING USE OF THE TERM  
"VICTIM"

(Assigned to the Honorable  
[JUDGE'S NAME])

The State of Arizona, by and through undersigned counsel, hereby responds to the defendant's Motion in Limine regarding the use of the term "victim" and respectfully requests the Court to deny the Motion. The defendant has requested the Court to prohibit the State from referring to the minor victim ["VICTIM'S INITIALS"] as "the victim." The Victims' Bill of Rights, as codified in both the Arizona Constitution and Arizona Revised Statutes, provides that a person is a "victim" once a determination of probable cause has been made, and does not need to wait for a jury finding of guilt to be called a "victim" in court. The following Memorandum supports this Response.

Submitted this \_\_\_\_ day of July, 2004.

RICHARD M ROMLEY  
MARICOPA COUNTY ATTORNEY

BY \_\_\_\_\_  
ASSIGNED ATTORNEY  
Deputy County Attorney

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Victims' rights have been made law by voter referendum (Article 2 § 2.1 of the Arizona Constitution); by the legislature (Arizona Revised Statutes, Title 13, Chapter 40); and by court rule, Rule 39, Ariz. R. Crim. P. Clearly, victims are afforded rights as victims long before any determination of guilt or any jury findings. Article 2 § 2.1(C) and A.R.S. § 13-4401(19) both define "victim" as "a person against whom a criminal offense has been committed." A.R.S. § 13-4401(6) further clarifies the matter by defining "criminal offense" as "conduct that gives a peace officer or prosecutor **probable cause to believe a felony occurred.**" [Emphasis added.] Rule 39(a), Ariz. R. Crim. P., defines "victim" by reference to A.R.S. § 13-4401(6). Thus, a victim becomes a "victim" for purposes of a criminal action long before any jury finding. The statutes give further instruction by stating that the victims' rights established by Chapter 40 "arise on arrest or formal charging of the person alleged to be responsible for the criminal offense against the victim." A.R.S. § 13-4402. *See also State v. Stauffer*, 203 Ariz. 551, 58 P.3d 33 (App. 2002). It is obvious that the intent was for a crime victim to be defined as such **before** a finding of fact by a jury, because most of the enumerated rights attach before trial (for example, the right to be informed of initial appearance, right to be consulted as to release, right to a speedy resolution of the case, right to consult with the prosecution

as to plea negotiations). If one is not a "victim" until after a jury makes a finding of guilt, those pretrial rights are null and void.

In this case, a determination of probable cause to believe that a felony has occurred has been made, not only by the prosecutor, but by the grand jury. The Indictment specifically refers to "[VICTIM'S INITIALS]" as the victim [insert "in all counts," "in Count 1," etc., as appropriate]. Thus, this case involves [a "criminal offense"/ "criminal offenses"] as defined by A.R.S. § 13-4401. Further, [VICTIM'S INITIALS] is the person against whom those criminal offenses have been committed. Therefore, [VICTIM'S INITIALS] is entitled to victims' rights, and by inference, to be referred to as "the victim." To give [VICTIM'S INITIALS] the rights of a victim, but refuse [him/her] the title of "victim," would be illogical and violate the spirit of the Victims' Bill of Rights.

For the above reasons, the State asks the Court to deny the defendant's Motion and enter an order permitting the State to refer to [VICTIM'S INITIALS] as the victim throughout all court proceedings.

Submitted this \_\_\_\_ day of July, 2004.

RICHARD M ROMLEY  
MARICOPA COUNTY ATTORNEY

BY \_\_\_\_\_  
ASSIGNED ATTORNEY  
Deputy County Attorney

Copy mailed\delivered  
this \_\_\_\_ day of July, 2004, to:

The Honorable JUDGE'S NAME  
Judge of the Superior Court

Attorney For Defendant

BY \_\_\_\_\_  
ASSIGNED ATTORNEY  
Deputy County Attorney